

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Establishment of Rules and Policies)	
For the Digital Audio Radio Satellite)	MB Docket No. 04-160
Service in the 2310-2360 MHz)	
Frequency Band)	
Radio Service Terrestrial Repeaters Network)	

To: The Commission

**COMMENTS OF STATE BROADCAST ASSOCIATIONS SUPPORTING THE
NATIONAL ASSOCIATION OF BROADCASTERS' PETITION FOR
DECLARATORY RULING**

The forty-one state broadcast associations listed below (the "State Associations"), by their attorneys, hereby submit their comments in support of the Petition for Declaratory Ruling ("Petition") filed by the National Association of Broadcasters ("NAB") in the above-captioned proceeding. The State Associations join NAB in urging the Commission to clarify that satellite digital audio radio service ("SDARS") providers should be prohibited from: (1) using any technology to permit the delivery of content that would be aired on a receiver in one location that differs from the content that would be aired on receiver in a different location; and (2) providing locally oriented services on nationally distributed channels. In short, SDARS should be the national-only service the Commission intended and the providers promised. The State Associations support NAB's Petition for the reasons set forth below.

XM Radio, Inc. ("XM") and Sirius Satellite Radio Inc. ("Sirius") currently supply local traffic and weather information to their subscribers.¹ These traffic and weather services, typically provided from the vacuum of a distant studio outside the community of interest, fly in the face of the Commission's 1997 SDARS Authorization. XM and Sirius offer these pseudo-local services despite their many previous assurances and commitments to the Commission that satellite radio would be national in nature and not local. Filing comments under its previous name, American Mobile Radio Corporation, XM declared that DARS, by its nature is a "nationwide service."² Likewise, Sirius, filing comments as Satellite CD Radio Inc., stated that satellite radio is "inherently national."³ Thus, the State Associations join the NAB in urging the Commission to require SDARS licensees to adhere to their commitments not to offer local services.

As NAB's petition demonstrates, the Commission intended an exclusively national radio service when it approved SDARS, due to the SDARS applicants' representations and the Commission's public interest determinations. At that time, the Commission and advocates for satellite radio deemed local programming to be technically unfeasible and impractical. In fact, the Commission decided not to make

¹ See e.g. "Just in time for the big Summer weekend, expanded shore traffic reports – from XM." *Inside Radio*, May 26, 2004, p. 1.

² In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Comments of American Mobile Radio Corporation, IB Docket No. 95-91, Sept. 15, 1995 at 18.

³ In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, Comments of CD Radio Inc, IB Docket No. 95-91, Sept. 15, 1995 at 73.

a finding with regard to the harm satellite radio might inflict on terrestrial broadcasters because it concluded that the service should be national-only.


Notwithstanding the fact that technical barriers to providing “local service” from distant studios have largely been removed, the State Associations agree with NAB that satellite radio should not be allowed to leverage new technologies to depart from the national nature of satellite radio service in violation of their commitments and the Commission's determinations. That includes the development of SDARS receivers that enable the delivery of “localized” programming from distant studios located not only outside the communities in question, but typically outside the state and region as well.

As NAB has stated, satellite radio’s effort to “localize” services distributed from a distant, central location will be harmful to local broadcasters and their listeners who live, work and have longstanding partnerships within the communities they serve. Truly local broadcasters know the communities they serve and thus meet the specific needs of their communities in ways no distant satellite provider could match or should be permitted to disrupt. The State Associations are not aware of any new technologies which can replace the public interest benefits inherent to the local broadcaster–community relationship. That strong relationship is dependent upon being an integral and active part of that community. SDARS intrusion into the local radio-community symbiosis could cause disruption, confusion, and even harm to local residents who depend upon radio broadcasts for careful and accurate local services, including news and weather.

In light of these facts, the State Associations urge the Commission to grant NAB's request to prevent satellite radio from providing local services. If the Commission is not inclined to take this step, then it should order SDARS licensees to cease provision of any kind of local services while it reopens the SDARS proceedings in order to collect an accurate record and to evaluate the consequences of allowing satellite radio to depart from its previous representations and offer local programming services. To date, the Commission has not had an opportunity to evaluate and reach the fundamental public interest determinations which would be necessary to authorize SDARS licensees to offer any service other than purely national. The State Associations strongly believe that such an evaluation would reveal the inadequacies and public interest threats associated with SDARS decision to offer local services.

Respectfully submitted,

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PARTICIPATING STATE BROADCAST ASSOCIATIONS

Alaska Broadcasters Association
Arizona Broadcasters Association
Arkansas Broadcasters Association
California Broadcasters Association
Colorado Broadcasters Association
Connecticut Broadcasters Association
Georgia Association of Broadcasters
Hawaii Association of Broadcasters
Illinois Broadcasters Association
Indiana Broadcasters Association
Iowa Broadcasters Association
Kansas Association of Broadcasters
Kentucky Broadcasters Association
Louisiana Association of Broadcasters
Maine Association of Broadcasters
MD/DC/DE Broadcasters Association
Minnesota Broadcasters Association
Mississippi Association of Broadcasters
Missouri Broadcasters Association
Nebraska Broadcasters Association
Nevada Broadcasters Association
New Jersey Broadcasters Association
New Mexico Broadcasters Association
The New York State Broadcasters Association, Inc.
North Carolina Association of Broadcasters
North Dakota Broadcasters Association
Ohio Association of Broadcasters
Oklahoma Association of Broadcasters
Pennsylvania Association of Broadcasters
Rhode Island Broadcasters Association
South Carolina Broadcasters Association
South Dakota Broadcasters Association
Tennessee Association of Broadcasters
Texas Association of Broadcasters
Utah Broadcasters Association
Vermont Association of Broadcasters
Virginia Association of Broadcasters
Washington State Association of Broadcasters
West Virginia Broadcasters Association
Wisconsin Broadcasters Association
Wyoming Association of Broadcasters